MONTANA LEGISLATIVE HISTORY

Chapter 339 19 79

Bill H 332 S _____ Original bill & history ✓ C

H. Committee on Judiciary

Hearing Date(s) h 1/26 ____ C

v 1/26 EX ____ C

_____ ____ C

_____ ____ C

Date Out _____ ____ C

S. Committee on Judiciary

Hearing Date(s) h 3/2 ____ C

v 3/3 ____ C

_____ ____ C

_____ ____ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

House BILL NO. 332

INTRODUCED BY Hayden

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 46-5-202, MCA, TO PERMIT THE APPLICATION FOR A SEARCH WARRANT TO BE MADE BY A SWORN TELEPHONIC STATEMENT WHICH IS ELECTRONICALLY RECORDED."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-5-202, MCA, is amended to read:

"46-5-202. Grounds for search warrant. (1) Any judge may issue a search warrant upon the written or telephonic application of any person, made under oath or affirmation before the judge, which:

~~(1)~~(a) states that an offense has been committed;

~~(2)~~(b) states facts sufficient to show probable cause for issuance of the warrant;

~~(3)~~(c) particularly describes the place or things to be searched; and

~~(4)~~(d) particularly describes the things to be seized.

(2) Whenever the application is made by telephone, the applicant's telephonic oath or affirmation is considered to have been made before the judge, and the sworn telephonic testimony must be electronically recorded by the judge on a recording device in the custody of the judge when the application is made. The recording must be retained in the court records and reduced to writing as soon as possible thereafter."

-End-

HB 332

INTRODUCED BILL

Judiciary COMMITTEE

46th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 322	licensed wrecking facility to search abandoned vehicle	1/23	Harrington	Friday 26th	pass	1/26
HB 332	search warrant to be made by sworn telephonic statement	1/23	Keyser	Fri. 26th	pass-amended	1/26
HB 335	custody hearing, upon request of custodial parents	1/23	Ramirez	Fri. 26th	pass	2/6
HB 338	provide standards for inspections - unlawful inspections	1/23	Kemmis	Fri. 26 th	pass	1/26
HB 352	require county designation sticker on personalized license plates	1/24	Kessler	Monday 29th	pass-amend	1/31
HB 345	revise open meeting law	1/24	Vincent	Monday 29th	Do not Pass Referred 2/8 table-committee bill	1/31 2/8

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
January 26, 1979

The regular meeting was called to order by Chairman Scully at 8:15 a.m. in room 436 of the Capitol Building on Friday, January 26, 1979. All members were present.

Bills scheduled for hearing were: House Bills 258, 311, 322, 332, 335 and 338.

HOUSE BILL NO. 338: Representative Kemmis, sponsor of the bill stated that this bill was introduced to set up a procedure so that a search warrant could be obtained, in inspections required or authorized by a state or local building code, such as fire, plumbing, electrical, zoning, ordiances and things such as that. It was the result of an Osha inspection. He explained the bill further and then said that he would have Chris Tweeten go through it more thoroughly.

CHRIS TWEETEN: Attorney General's office: Mr. Tweeten went through the bill one section at a time explaining the content and what it would do. He said some sections are self-explanatory, but there are several sections that are in conflict. The title is not what we intended when we drafted this bill. We intend to have people be free of unwarranted search and inspection.

Section 1 follows the procedure that must be followed in supreme court cases. This section codifies that distinction. It defines criminal search warrants. Section 3 states when they are authorized. It states that consent must be given. An inspection warrant may be issued only for cause. He gave some examples of situations not covered, such as liquor or firearms and the expectation of privacy in a business pervasively regulated. Some inspections need not be done under a warrant. It does contemplate that consent will be the rule rather than the exception. He talked of the supreme court rulings in some cases.

Section 7 sets forth the content of the warrant. Section 8 says it must be a reasonable time and if no time is set forth then the warrant expires in 14 days. Section 10 is concerned with forcible entry, and section 12 is the enforcement provision. It provides that any evidence secured by illegal search to be suppressible.

Section 13 outlines the criminal penalty and section 14 keys into bill section 1. It sets forth the distinction in the inspection warrant search category and the criminal search category.

trials on schedule.

JIM JENSON: Montana Magistrates Association. I would con with Mr. Ramirez and the comments he has made.

JANET JENSON: Justice of the Peace of Missoula. I concur.

With no discussion and no questions the hearing closed on HB 311.

HOUSE BILL NO. 335: Representative Ramirez said this bill provided for a custody hearing upon the death of a custodial parent. He went on and explained. It will make a significant change to the people who are affected. If a parent who has custody of a child dies then the custody would go to the natural parent, even though that may not be in the best interests of the child. This would change that absolute custody. Sometimes it should be someone other than the natural parent. He gave examples of cases. This was the reason for this bill being proposed.

There were no other proponents, no opponents and no questions from the committee. The hearing closed on House Bill 335.

HOUSE BILL NO. 332: Representative Keyser said this bill would permit the application for a search warrant to be made by a sworn telephonic statement and recorded. This bill is at the request of the Sheriffs and Peace Officers Association. He explained how the warrant would be issued and that the judge would issue a warrant but that it would be much faster.

JOHN BELL: Montana Sheriff and Peace Officers Association. I support this bill. John Moe, the former sheriff of Missoula, heartily endorses this bill. He gave examples of cases he was familiar with.

JIM BURNS: Under Sheriff of Cascade County. This bill is modeled after state laws in California and Washington. I know of many cases where this bill would have helped. Sometimes the distance from the courthouse can have a definite influence on the outcome of an arrest. We feel that this proposed legislation properly controlled by the judge, and then the conversation is reduced to writing immediately after and is a part of the court record, would be a distinct advantage in a case

TOM HONZEL: County Attorneys Association. We helped in the drafting of this bill. We are in support of this legislation and urge you to support it. In cases of major crime something like this would be a great benefit. his would be a great tool for the law enforcement organizations. There were no opponents.

REPRESENTATIVE LORY: If someone came to my door, how would I know if he had an official search warrant.

Representative Keyser said that he would have a piece of paper, it would not be verbal.

Representative Daily asked what type of a device would be used, and the answer was, a simple tape recorder.

Representative Anderson asked, is there some kind of a sophisticated way to identify the voice patterns. Mr. Burns said yes, but that would not be used because it would be much too expensive, but that they would probably have a code of some kind to assure correct identification. Our proposal would be that the affidavit would be filled out before the search and it would be served on the people involved.

There was discussion about an incident at Townsend and the ways the order would be recorded. Representative Keedy wondered if there was a reason that the bill was limited to search warrants rather than arrest warrants as well, and the answer was that there has not been the problem with the arrest warrants.

There was no further discussion and the hearing closed on House Bill 332.

HOUSE BILL NO. 322: Representative Daily explained that Representative Harrington was gone and that he would be explaining the bill to the committee, with the assistance of Bill Romine. He said it was just a wrecked vehicles law.

BILL ROMINE: Montana Automotive Dismantlers and Recyclers Association. This bill would permit a licensed wrecking facility to make the required search for the owner of an abandoned vehicle. In most instances the police officer does not take possession, its usually done by a wrecker. They must send notices to the person whose vehicle is

JUDICIARY COMMITTEE
EXECUTIVE SESSION
January 26, 1979

Following the regular meeting the committee went into executive session to take action on pending bills. The meeting was called to order by Chairman Scully at 9:30 a.m. in room 436 of the Capitol Building on Friday, January 26th.

HOUSE BILL NO. 248: Representative Keedy said he had several amendments that he would propose, on page 3, line 4 and page 3, line 9 and page 4, line 9. Also on page 2, lines 3 and 4 and page 5 lines 21 and succeeding lines and line 22. Then followed discussion about the proposed amendments and about jurisdiction and how much would have to be served of a sentence. Representative Rosenthal said he wanted clarification as to what this bill would do, was he wrong that what this bill would do would affect only a few people now on the furlough system. General discussion about the furlough program, with Representatives Iverson and Daily asking for clarification. Representative Daily asked if they were making it harder to get on the furlough program. Representative Keedy said that in his opinion it would make it impossible. Representative Holmes said that the sentence review board has an average of 6 cases a year, and that in most cases they increased the sentence rather than decreased it.

It was felt that the grid should be the determining factor, and that the 2 years as stated in the bill should be cut out. Representative Keedy stated that the offender must have a designation of a non-dangerous offender before he would be considered for parole. General discussion followed about sentencing discrepancies. Representative Keedy said that with the wide range of discrepancy we have a system for real abuse of sentencing. Then followed discussion about the length of sentence.

Representative Daily moved that the bill be passed for the day. There was much disagreement to the motion and Representative Scully told them they could not speak to the motion. The motion carried to pass for the day.

HOUSE BILL NO. 238: Representative Conroy moved "do pass" and spoke to his motion. Representative Lory moved to amend page 2, line 23, following "part" strike "1" and insert "6". The motion carried with the vote unanimous.

Discussion about another amendment on page 2, line 19, and line 20, and to strike the remainder of the section. Representative Daily moved to pass for the day and the motion carried.

Representative Teague took the chair in order for Chairman Scully to present a bill in the Senate.

HOUSE BILL NO. 258: Representative Keyser moved to pass for the day and the motion carried. After some discussion Representative Lory moved that the members reconsider their action and the motion carried with the vote unanimous.

Representative Lory moved an amendment on Page 1, line 14, following "be" strike "written" and insert "typed or printed" and also on page 1, line 15, following "as" strike, "typed or printed" and insert "written". The motion to amend carried with the vote unanimous.

Representative Keyser moved "do pass as amended" and the motion carried with the vote unanimous.

HOUSE BILL NO. 311: Representative Daily moved "do pass" and the motion carried with Representative Uhde voting "no".

HOUSE BILL NO. 335: Representative Seifert moved "do pass". Representative Lory moved a substitute motion to pass for the day. The motion carried with Representatives Holmes and Roth voting "no".

HOUSE BILL NO. 322: Representative Keyser moved "do pass". Discussion followed about who has the authority to order the vehicle to be removed. The question was called and the motion carried with Representatives Eudaily, Kemmis, and Anderson voting "no".

HOUSE BILL NO. 332: Representative Seifert moved "do pass". Representative Holmes moved an amendment on page 2, line 2, following "and" strike "reduced to writing" and insert "transcribed, time and date of the recording".

Representative Iverson moved to divide the amendment and the motion carried with the vote unanimous. The question was called and the motion carried with Representative Lory voting "no". The question was called "do pass as amended" and the motion carried with Representative Kemmis not voting because he had not heard the complete testimony

HOUSE BILL NO. 338: Representative Lory moved "do pass". Representative Daily offered a substitute motion to "pass for the day", and the motion failed with five voting "yes". There was general discussion as to whether a fiscal note was required, and the decision was it was not. The question was called and the motion carried with Representative Anderson voting

The meeting adjourned at 10:45.

Forty-Sixth LEGISLATIVE SESSION

COMMITTEE ON Judiciary - Senate

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
HB 258	2/1/79	3/1/79	3/1/79						3/1/79
HB 259	2/1/79	3/1/79	3/14/79					3/1/79	
HB 311	2/1/79	3/2/79	3/2/79				3/2/79		
HB 332	2/1/79	3/2/79	3/5/79					3/3/79	
HB 338	2/1/79	3/2/79	3/21/79						3/21/79
SB 341	2/2/79	2/9/79	2/9/79	2/9/79					
SB 345	2/2/79	2/9/79	2/12/79			2/12/79			
SB 346	2/2/79	2/13/79	2/16/79			2/15/79			
SB 348	2/2/79	2/13/79	2/19/79			2/18/79			
SB 339	2/2/79	2/9/79	2/12/79	2/12/79					
SB 349	2/3/79	2/10/79	Tabled 2/10/79						
SB 355	2/3/79	2/12/79	2/12/79	2/12/79					
SB 357	2/3/79	2/12/79	Tabled 2/15/79						
HB 163	2/3/79	2/28/79	2/28/79					2/28/79	
HB 248	2/3/79	3/1/79						3/6/79	
SB 364	2/5/79	2/10/79	2/10/79			2/10/79			

Use a separate sheet for Senate, House Bills and Resolutions

HOUSE BILL NO. 332

INTRODUCED BY KEYSER

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 46-5-202, MCA, TO PERMIT THE APPLICATION FOR A SEARCH WARRANT TO BE MADE BY A SWORN TELEPHONIC STATEMENT WHICH IS ELECTRONICALLY RECORDED."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-5-202, MCA, is amended to read:

"46-5-202. Grounds for search warrant. ~~(1)~~ Any judge may issue a search warrant upon the written or telephonic application of any person, made under oath or affirmation before the judge, which:

~~(1)~~(a) states that an offense has been committed;

~~(2)~~(b) states facts sufficient to show probable cause for issuance of the warrant;

~~(3)~~(c) particularly describes the place or things to be searched; and

~~(4)~~(d) particularly describes the things to be seized.

(2) Whenever the application is made by telephone, the applicant's telephonic oath or affirmation is considered to have been made before the judge, and the sworn telephonic testimony must be electronically recorded by the judge on a recording device in the custody of the judge when the application is made. The recording must be retained in the court records and ~~reduced to writing~~ TRANSCRIBED, INCLUDING THE TIME AND DATE OF RECORDING, as soon as possible thereafter."

-End-

if one party fails to appear.

Proposed Bill - gives the court the discretion to commence proceedings at the designated time.

HB 335 (Ramirez)

Current Law - child custody is determined by the provisions of Title 40, chapter 4, part 2. Presently, a custody decree can be modified only if the court finds that changed circumstances make a modification in the best interests of the child.

Proposed Bill - provides for a procedure for a hearing to determine custody in case a custodial parent dies. Custody would go to the noncustodial parent unless a hearing is requested by a proper party.

NOTE: SB 516 (Judiciary Committee bill) amended 40-4-219 to delete the 2-year limitation on modifications.

Section 1.	NEW.	Hearing upon death of custodial parent.
Section 2.	NEW.	Parties who may request a hearing.
Section 3.	NEW.	Determination of custody.
Section 4.	amend 40-4-219.	Modification.
Section 5.	amend 40-6-221.	Custody, services, and earnings of child.

HB 308 (Kemmis)

Repeals section 40-1-211, MCA, which provides that a marriage license may not be issued to a person who is delinquent in providing support to dependents unless a court of record authorizes the issuance of a license.

HB 332 (Keyser)

Current law requires that an application for a search warrant be made "before the judge" (in person).

This bill permits an application to be made by telephone if the judge records the testimony on a device in his custody and the recording is transcribed as soon as possible.

HB 338 (Kemmis - by request of Attorney General)

Current law does not provide for inspection warrants and does not provide adequate standards and procedures for inspections conducted without a search warrant.

This bill creates standards and procedures for the issuance

MINUTES OF THE MEETING
SENATE JUDICIARY COMMITTEE
March 2, 1979

The forty-ninth meeting of the Senate Judiciary Committee was called to order in Room 331 of the Capitol Building by Senator Everett R. Lensink, Chairman on the above date at 9:34 a.m.

ROLL CALL:

All members were present with the exception of Senator Anderson, who was excused.

CONSIDERATION OF HOUSE BILL 32:

This is an act to amend the laws relating to crime victims compensation by clarifying terminology, by deleting welfare benefits as a collateral source, by permitting the division of workers' compensation to adopt requirements concerning information on the availability of assistance to victims and the establishment of escrow accounts for funds owed to individuals inflicting injury or death, by permitting the reduction or elimination of compensation when the victim contributes to the injury or death, and by changing a reference to earmarked revenue fund to agency fund. Representative Quilici stated that this bill amends the crime victim's compensation act and would make Montana law coincide with the federal law. He introduced Norman Grosfield, Administrator of the Worker's Compensation Division of the Department of Labor and Industry.

Mr. Grosfield stated that this act would conform Montana law to proposed federal legislation and under the federal legislation they may be able to get some reimbursement of what they pay out. He stated that they can offset under different programs such as insurance benefits, unemployment compensation, etc. He stated that the federal government will not let us offset against welfare. He stated that the House placed a provision in the bill that would allow benefits involving the use of an automobile if the automobile was used as a weapon. He then went over the rest of the bill and explained the changes.

There were no further proponents and no opponents.

Representative Quilici stated that these amendments really make this bill conform to the new federal statute and we will have a better chance to receive funds for this program through the federal government. He stated it might be some problem with the motor vehicles and he would have no objections to amending this out of there.

There were no further questions or comments, and the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 332:

This is an act to amend section 46-5-202 to permit the application for a search warrant to be made by a sworn telephone statement which is electronically recorded. Representative Keyser gave an explanation of this bill. He stated at the present time, if you believe that a crime has been committed, you have to go to the judge at his office or his home to secure this warrant. In many areas, some live 40 to 60 miles away and by the time they would get there, contact the judge, get the search warrant, then the goods are gone. He stated that the case in Townsend was a good example with the use of an airplane and one of the largest amounts of marajuana ever discovered. He stated that he would offer an amendment which would make it necessary to contact the county attorney first; he would have this recorded; and if he felt that this information was valid, then he would contact the judge; and then the judge would be in contact with the officer and issue a telephone search warrant.

Jim Burnes, undersheriff of Cascade County, stated that this bill was modeled after the present Washington statute. He stated that he wanted to clear up a misconception - that they don't intend for this to be a constant thing. He told of two major homicides, both of which happened on Sunday; and he had no success the entire day in contacting one of their judges and he stated that the first forty-eight hours in a major crime is critical; that evidence deteriorates, contraband moves fast; criminals move fast; and he asked the committee to support this bill.

John Bell, representing the Montana Sheriffs and Peace Officers Association, stated that he enthusiastically supports this bill. He stated that Augusta has a little airstrip and they are many miles out of Helena. He felt that this bill should pass as they should be able to use any electronic tool that is available.

Bill Romine, representing the Montana Sheriffs and Peace Officers Association, stated that the phone is being used now, that when a deputy is a long ways from the justice of the peace, he calls another deputy, explains what is going on, that the deputy then fills out an affidavit of what is going on, based

on the information that he has received over the telephone, then he goes to the county attorney's office, and then to the justice of the peace. He stated that we are already using the telephone system, but they do not have a system where we are recording; and it is a stopgap procedure. He felt that safeguards are in this bill and it would be much better all recorded and typed up.

Jim Jensen, representing the Montana Magistrates Association, stated that they support this bill with the amendment.

Mike McGrath, Assistant Attorney General, stated that the Department of Justice support this bill.

There were no further proponents and no opponents.

Representative Keyser stated that the officer has to have a just cause and were under the same obligations as when they contacted a district judge. He said that they want our officers and law enforcement people to be up to date and able to take care of situations as they arise.

Senator Van Valkenburg questioned what is their opinion as to the constitutionality to the provision that the application must be in writing. Mr. McGrath stated that he had not researched the bill. Representative Keyser stated that this was used in Clark County, Washington since 1972; and they have never lost a case yet because it was unconstitutional. Mr. Romine stated that as he understands that reducing this to writing is a safeguard and takes care of the constitutional question.

Senator Turnage stated that he would feel more comfortable if this was required verbatim.

Senator Towe questioned how would a person know if someone comes on your doorstep and shows a warrant, how do you know that the judge has actually signed it; and wondered how they are going to prevent that. It was noted that unless a person knows the judge's writing right now, he doesn't know if the judge signed the warrant; and that once an officer pulls something like that, that officer is dead, if he ever has to go to a judge again; and he can't afford to take that risk.

Senator Healy asked what if neither the county attorney or the deputy is available. Representative Keyser said that then he should contact the judge.

Senator Towe asked how are we going to be assured that this does not become routine. Representative Keyser stated that he personally did not think this would be a problem as the judges and courts have control; and most judges have strong beliefs about issuing search warrants; they are tough to get; the judges are very reluctant to issue them; and if there is an abuse, that judge will cut them right down.

There were no further questions and no further comments and the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 311:

This is an act to eliminate the requirement providing that a justices' court wait for a defendant one hour beyond the time set for trial before the court may enter a default, etc. Representative Ramirez gave an explanation of this bill and he stated that the present system creates some problems for the justices of peace.

Jim Jensen, representing the Montana Magistrates Association, stated that they heartily endorse this bill, especially in small claims courts, and this would help a speedy remedy.

There were no further proponents and no opponents.

Senator Van Valkenburg moved that this bill be concurred in. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 335:

This is an act to provide for a custody hearing, if requested, upon the death of a custodial parent, etc. Representative Ramirez stated that under the present law, if one parent dies, custody automatically goes to the other natural parent; and that this has created some problems. He said that in some cases, the natural father may not have seen this child for many years and a stepfather may want this child; he has raised the child; been part of the family and yet is not entitled to this child.

There were no further proponents and no opponents.

Senator Turnage moved that this bill be concurred in. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 270:

This is an act to amend section 70-1-408 to clarify the statement of the rule against perpetuities. Representative Kemmis stated that the Montana statute does not include "if at all" and that there is interest in property that is contingent remainder. He gave an example if a person gives his interest to his wife, and then to his son, if he lives to 21 years of age, that they would want that interest to be good and to be able to vest, and the words "if at all" should be in the law to make it clear.

There were no further proponents and no opponents.

Date _____

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)			
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

Please sign & deliver to "Secretary" Judiciary

SENATE Judiciary COMMITTEE

BILL _____ VISITORS' REGISTER DATE 3/2/

Please note bill no. (check one)

NAME	REPRESENTING	BILL #	SUPPORT	OPP
[illegible]	Dept. Admin	HB 338	✓	
[illegible]	Atty Gen	HB 300, 332, 338	✓	
Gary Olson	DHES	HB 338	✓	
[illegible]	DHES	HB 338	✓	
[illegible]	DITY			
[illegible]	Div of Workers' Comp	HB 32	✓	
Terry Keyser	Dist #81	HB332		
Mae Nan Ellingson	City of Missoula	HB 338	✓	
James R Burns	Mont. Sheriffs Assn	HB 332	✓	
John Bell	Sheriffs	H.332	✓	
William L. Rosine	Mont. Sheriffs & Peace Officers	H.332	✓	
Bill Hanson	URD			

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

(3) Whenever a law enforcement officer wishes to obtain a search warrant by telephone, he shall first contact the county attorney or a deputy county attorney. If the county attorney or deputy county attorney is convinced that a warrant is justified and that the circumstances require its immediate issuance he shall telephone the judge and state that he is convinced that the warrant should be issued by telephone. The judge shall then telephone the officer at the number provided by the county attorney or deputy county attorney and the officer shall make his application as provided in subsection (2). The judge may issue a warrant, the officer shall sign the warrant with his own name and the judge's name. A search warrant issued upon the telephonic request of a person other than the county attorney or a deputy county attorney is not valid unless the procedure provided for in this subsection is followed.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 3, 1979

The fiftieth meeting of the Senate Judiciary Committee was called to order in room 311 of the capitol building by Senator Everett R. Lensink on the above date at 9:33 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF HOUSE BILL 464:

This is an act to change the requirement that a youth may waive his rights only with the advice of counsel when the youth is over the age of twelve and the youth and his parents do not agree about making a waiver.

Representative Keyser gave an explanation of this bill, stating that what has happened is that some judges have interpreted the law to say that any time a youth is picked up for any little thing that he should have counsel there representing him.

Tom Honzel, representing the Montana Association of County Attorneys, stated that the youth court act passed in 1964 and the language seemed to indicate that you didn't always have to have an attorney present and the Montana Supreme Court said when you question a youth, you have to have an attorney present. He stated that the policy is to work with a youth early and do it on an informal basis.

Dick Meeker, a juvenile probation officer in Montana, gave a statement in support of this bill and he said that many youth are having to go to court when they could work with them on an informal basis.

There were no further proponents.

Karen Mikota, representing the Montana League of Women Voters, stated that the original bill, when it first came out, stated "only with the advice of counsel" and she said she did not see where it does anything more than the original law did.

Senator Towe stated that the meat of the bill is in subsection (3) and he felt that you certainly want counsel present if he is about ready to sign consent of something and wondered why they need with or without advice of counsel.

Senator Turnage moved that the bill be concurred in as amended. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 500:

Representative Lory said that this bill was introduced at the request of the county attorneys association. This is an act to require a report on the sale or transfer of precursors to controlled substances. He stated that this bill would give the department of justice a lead on large sales of these substances and that it does exempt certain individuals.

Tom Honzel, representing the Montana Association of County Attorneys, said that they do support this bill and most of the information is contained in the statement of intent.

There were no further proponents and no opponents.

Senator Anderson questioned if any of these substances are used continually in large amounts and Representative Lory stated that there are exceptions but that they are not in common use.

Senator Lensink questioned as to where this list came from and Representative Lory stated that they were copied from the California law.

Senator Turnage moved that this bill be concurred in. The motion carried unanimously.

DISPOSTION OF HOUSE BILL 464:

Senator Turnage moved that this bill be not concurred in. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 369:

Senator Brown moved that this bill be concurred in. The motion carried with Senator Olson voting no.

DISPOSITION OF HOUSE BILL 332:

Senator Turnage moved that the bill be amended on page 2, line 2, following the word "transcribed" by inserting the word "verbatim". The motion carried unanimously.

Senator Anderson moved that the bill be amended on page 1, line 23, after the word "sworn" the words "or affirmed" be inserted. The motion carried unanimously.

Senator Towe moved that in the county attorney's amendment that it be amended by inserting "shall" and that the amendment be so adopted. The motion carried unanimously.

Senator Turnage moved that the bill be concurred in as amended. The motion carried with Senators Towe and Van Valkenburg voting no.

CONSIDERATION OF HOUSE BILL 32:

Senator Turnage moved that this bill be amended on page 3, subsection (c) line 6 through 15, by deleting all the new material and reinsert all the deleted material. He stated that this is going to delete that fund overnight. Senator Van Valkenburg stated he did not think that that is true - only where an automobile is used to purposely commit a crime-only where a person would take a car and deliberately run a human being down with it. Senator Turnage said that we should make exceptions of a normal traffic violation.

Senator Turnage moved to amend the amendment and further amend on page 3, following line 45 by inserting the new language: "does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle as described in Title 61." The motion carried unanimously.

Senator Turnage moved that the bill as amended, be concurred in. The motion carried unanimously.

There being no further business, the meeting was adjourned.

SENATOR EVERETT R. LENSINK, Chairman
Senate Judiciary Committee

Date 3/3/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Gall, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

HB 332

1. Page 1, line 23.
Following: "sworn"
Insert: "or affirmed"

2. Page 2, line 2.
Following: "TRANSCRIBED"
Insert: "verbatim"

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~~[illegible]~~

3. Page 2.
Following: line 4

Insert: "(3) Whenever a law enforcement officer wishes to obtain a search warrant by telephone, he shall first contact the county attorney or a deputy county attorney. If the county attorney or deputy county attorney is convinced that a warrant is justified and that the circumstances require its immediate issuance he shall telephone the judge and state that he is convinced that the warrant should be issued by telephone. The judge shall then telephone the officer at the number provided by the county attorney or deputy county attorney, and the officer shall make his application as provided in subsection (2). ~~[illegible]~~ the judge [illegible] a warrant, the officer shall sign the warrant with his own name and the judge's name. A search warrant issued upon the telephonic request of a person other than the county attorney or a deputy county attorney is not valid unless the procedure provided for in this subsection is followed.

(4) A search warrant issued upon any telephonic request is invalid unless it is subsequently signed by the issuing judge or his successor."

STANDING COMMITTEE REPORT

March 5 19 79

MR. President

We, your committee on Judiciary

having had under consideration House Bill No. 332

Respectfully report as follows: That House Bill No. 332,

third reading bill, be amended as follows:

1. Page 1, line 23.
Following: "sworn"
Insert: "or affirmed"

2. Page 2, line 2.
Following: "TRANSCRIBED"
Insert: "verbatim"

3. Page 2.
Following: line 4
Insert: "(3) Whenever a law enforcement officer wishes to obtain a search warrant by telephone, he shall first contact the county attorney or a deputy county attorney. If the county attorney or deputy county attorney is convinced that a warrant is justified and that the circumstances require its immediate issuance, he shall telephone the judge and

DDXPASSX

(Continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

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state that he is convinced that the warrant should be issued by telephone. The judge shall then telephone the officer at the number provided by the county attorney or deputy county attorney, and the officer shall make his application as provided in subsection (2). If the judge approves a warrant, the officer shall sign the warrant with his own name and the judge's name. A search warrant issued upon the telephonic request of a person other than the county attorney or a deputy county attorney is not valid unless the procedure provided for in this subsection is followed.

(4) A search warrant issued upon any telephonic request is invalid unless it is subsequently signed by the issuing judge or his successor."

And, as so amended,
BE CONCURRED IN

HOUSE BILL NO. 332

INTRODUCED BY KEYSER

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 46-5-202, MCA, TO PERMIT THE APPLICATION FOR A SEARCH WARRANT TO BE MADE BY A SWORN TELEPHONIC STATEMENT WHICH IS ELECTRONICALLY RECORDED."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-5-202, MCA, is amended to read:

"46-5-202. Grounds for search warrant. (1) Any judge may issue a search warrant upon the written or telephonic application of any person, made under oath or affirmation before the judge, which:

~~(1)~~(a) states that an offense has been committed;

~~(2)~~(b) states facts sufficient to show probable cause for issuance of the warrant;

~~(3)~~(c) particularly describes the place or things to be searched; and

~~(4)~~(d) particularly describes the things to be seized.

(2) Whenever the application is made by telephone, the applicant's telephonic oath or affirmation is considered to have been made before the judge, and the sworn OR AFFIRMED telephonic testimony must be electronically recorded by the judge on a recording device in the custody of the judge when the application is made. The recording must be retained in the court records and ~~reduced to writing~~ TRANSCRIBED VERBATIM, INCLUDING THE TIME AND DATE OF RECORDING, as soon as possible thereafter.

(3) WHENEVER A LAW ENFORCEMENT OFFICER WISHES TO OBTAIN A SEARCH WARRANT BY TELEPHONE, HE SHALL FIRST CONTACT THE COUNTY ATTORNEY OR A DEPUTY COUNTY ATTORNEY. IF THE COUNTY ATTORNEY OR DEPUTY COUNTY ATTORNEY IS CONVINCED THAT A WARRANT IS JUSTIFIED AND THAT THE CIRCUMSTANCES REQUIRE ITS IMMEDIATE ISSUANCE, HE SHALL TELEPHONE THE JUDGE AND STATE THAT HE IS CONVINCED THAT THE WARRANT SHOULD BE ISSUED BY TELEPHONE. THE JUDGE SHALL THEN TELEPHONE THE OFFICER AT THE NUMBER PROVIDED BY THE COUNTY ATTORNEY OR DEPUTY COUNTY ATTORNEY, AND THE OFFICER SHALL MAKE HIS APPLICATION AS PROVIDED IN SUBSECTION (2). IF THE JUDGE APPROVES A WARRANT, THE OFFICER SHALL SIGN THE WARRANT WITH HIS OWN NAME AND THE JUDGE'S NAME. A SEARCH WARRANT ISSUED UPON THE TELEPHONIC REQUEST OF A PERSON OTHER THAN THE COUNTY ATTORNEY OR A DEPUTY COUNTY ATTORNEY IS NOT VALID UNLESS THE PROCEDURE PROVIDED FOR IN THIS SUBSECTION IS FOLLOWED.

(4) A SEARCH WARRANT ISSUED UPON ANY TELEPHONIC REQUEST IS INVALID UNLESS IT IS SUBSEQUENTLY SIGNED BY THE ISSUING JUDGE OR HIS SUCCESSOR."

-End-

REFERENCE BILL